

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 747 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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MINOR HARSHAL B. RAVAL

Versus

BHARATKUMAR NAVNITLAL RAWAL

Appearance:

1. First Appeal No. 747 of 2002
MR JA SHELAT for Petitioner No. 1-2
..... for Respondent No. 1-2,4
MR HR PRAJAPATI for Respondent No. 3
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 17/04/2002

ORAL JUDGEMENT

1. Minor Harshal Bharatkumar Raval and others (at the relevant time) appellants - original plaintiffs have filed this first appeal against the judgment and decree dated 19th April, 1990, passed by City Civil Court,

Ahmedabad, in Civil Suit No.2492 of 1982. The learned Judge by his impugned judgment and decree pleased to dismiss the suit. The learned Judge also held that as the plaintiffs were initially permitted to sue the defendants as indigent persons, the court fees appropriate to the claim made in the suit had they not been permitted to sue in forma pauperis shall be recovered from them in accordance with law. The aforesaid appeal was filed on 28th April, 1991. It appears that during the pendency of appeal also the appellants filed an application for an indigent persons and the same was granted.

2. The facts giving rise to this appeal are as under:-

2.1 Plaintiffs grandfather Shri Navnitlal Manilal Raval was settled in Uganda. As a result of political crises in Uganda, he repatriated to India in 1972. Government of India granted certain concessions to the persons repatriated from Uganda and in pursuance of the policy of the Government of India to give certain concessions to such persons, Government of Gujarat also co-operated assistances to such persons.

2.2 In 1974 plaintiffs grandfather Shri Navnitlal Manilal Rawal was given a loan of Rs.6000/- for constructing a small house in Dariapur Gurjari Vasahat Co-operative Housing Society Limited. In 1975 Shri Navnitlal was given a loan of Rs.5000/- to utilise for business purposes. Thus in all on two separate heads a loan of Rs.11,000/- was given to Shri Navnitlal. Shri Navnitlal did construct one small house bearing No.17/C in the said society.

2.3 On 25.2.1976 Navnitlal expired and on 9.12.79 plaintiff Minor Harshal born and then Hemal born. On 11.12.79 agreement of sale was executed between the defendants No.1 and 2 on one side and defendant no.3 on the other side.

2.4 Thereafter the Mamlatdar, Ahmedabad, issued a notice on 4.10.80 to Shri Navnitlal demanding Rs.11,000/- in this behalf. His son Bharatkumar (defendant No.1) had paid in all Rs.2,800/- towards the above loan amounts. The Recovery Mamlatdar, Ahmedabad issued another notice on 13.4.81 to defendant No.1 in this behalf.

2.5 Being aggrieved and dissatisfied with the aforesaid action, the defendant No.1 filed special Civil Application No.1852 of 1981 challenging the aforesaid

recovery notices. This Court admitted writ petition and granted stay against the recovery proceedings. The plaintiffs issued a notice on 23.6.81 to defendant No.2 for handing over the possession of the suit property to the plaintiffs. The defendant No.2 replied the said notice on 27.7.81.

2.6 In view of the same the plaintiffs filed suit on 4.12.81 being Civil Suit No.2492 of 1982 for declaration and permanent injunction. In the suit, the plaintiffs prayed for declaration that the agreement dated 11.12.1979 executed by defendants No.1 and 2 in favour of defendant No.3 for selling suit property as invalid, illegal, void, inoperative against the provisions of Hindu Law. In the suit it was alternatively contended that to declare the agreement dated 11.12.79 in operative so far it relates to one third undivided share of the plaintiffs and alternatively one third portion be awarded to the plaintiffs.

2.7 In the suit it was further contended by the plaintiffs that during the life time of Navnitlal, Hindu Undivided Family was constituted of which Navnitlal and his two sons i.e. defendant No.1 and 2 were co-parceners. Navnitlal died as a member of HUF of which he was also the Karta.

2.8 It was also contended that it was a self acquired property of Navnitlal and on the death of Navnitlal, defendants No.1 and 2 acquired the suit property as ancestral property and therefore the plaintiffs have acquired right in the suit property as co-parceners on their birth.

2.9 Before the trial Court the evidence was led both on behalf of the plaintiffs and defendants and ultimately the learned trial Judge has held that the mother of plaintiffs Nalini Bharkat Kumar Rawal (Ex.52) has stated that her father-in-law (deceased Navnitlal Manilal Rawal) died on 25.11.1976 and that the suit property was his absolute ownership property and the suit property was acquired by him from his own funds. The learned trial Judge further held that the declaration made by deceased Navnitlal Manilal to the society which is not challenged by the first defendant even before the society. In that declaration two persons are figuring i.e. the second defendant and his sister Rashmiben as the persons entitled to succeed after Navnitlal Manilal Rawal, whereas the defendant No.1 does not even figure at all. Above all, nowhere is the nature of the property indicated as ancestral property and on the contrary the

nature is shown to be that of absolute ownership property of the deceased Navnitlal. Thus, as such the property cannot be termed as an ancestral property. It is pertinent to note that the present plaintiffs have not challenged this document before the society.

2.10 The learned Judge further held that there is some truth in the allegation of the third defendant that for pressurising him the present suit has been instituted by plaintiffs at the instance of first and second defendant. Before the birth of plaintiffs, the defendants No.1 and 2 had taken over the suit property after the death of deceased Navnitlal Manilal, in their absolute ownership rights. The co-parcenary right of any of the plaintiffs arising is a distant factor so there is no question of the suit property being co-parcenary. The agreement of sale executed (Ex.41) both defendants No.1 and 2 on one hand and defendant No.3 on the other, it is clearly stated that first and second defendant have absolute ownership rights in the property constructed from their own income. Even this covenant contained in the said document is not challenged therefore the suit property does not constitute a co-parcenary property and hence the plaintiffs have no right to challenge the alienation contemplated by Ex.41 by the defendants No.1 and 2 as the absolute owners thereof in favour of defendant No.3 relating to the suit property therefore the suit property is not an ancestral property.

2.11 The plaintiffs are not co-parceners of the property even if it is were so herein a flat is purchased out of the consideration received and no facts are brought on record whereby it can be proved that the defendants No.1 and 2 have dealt with the property in a manner prejudicial to the interest of minor.

3. At the time of hearing of this appeal, it may be noted that originally Mr.J.A.Shelat, learned advocate was appearing on behalf of the appellants but as he is out of India, nobody was appearing on behalf of the appellants.

4. With a view to see that the interest of the appellants are preserve and protected properly, I requested Ms.B.R.Gajjar, learned counsel to appear as amicus-curiae to assist the court for which she has readily agreed for the same.

5. On behalf of the appellants she submits that appellants have try to prove that the suit property is ancestral property. The learned Judge ought to have held that the suit agreement dated 11th December, 1987 is not

binding to the appellants. The learned Judge ought to have held that the deceased Navnitlal Manilal has not incurred debt. The learned Judge ought to have held that the suit agreement is not executed by defendants no.1 and 2 for payment of debt of deceased Navnitlal. The learned Judge has erred in holding that in the instant case plaintiffs are not co-parcenaries of the property and even if it is were so herein a flat is purchased out of the consideration received and no facts are brought on the record whereby it can be proved that the first and second defendants have dealt with the property in a manner prejudicial to the interest of minor.

5.1 Mr.Prajapati, learned advocate for the respondents has tried to support the findings of the trial court. He submitted that in her deposition the mother of the plaintiffs (Ex.52) has stated that her father-in-law deceased Navnitlal Manilal Rawal died on 25.11.1976 and that the suit property was his absolute ownership property in that it was acquired by him from his own funds. He further submitted that Ex.56 declaration made by deceased Navnitlal Manilal to the society which is not challenged by the first defendant ever before the society. In that declaration two persons are figuring i.e. the second defendant and his sister Rashmiben, as the persons entitled to succeed after Navnitlal Manilal Rawal, whereas the defendant No.1 does not even figure at all, and above all, nowhere is the nature of the property indicated as ancestral. On the contrary, the nature is shown to be that of absolute ownership property of the deceased Navnitlal. Thus, as such the property cannot be termed as an ancestral property. He further submitted that it is pertinent to note that the present plaintiffs have not challenged this document before the society. There is some truth in the allegation of the third defendant that for pressurising him the present suit has been instituted by plaintiffs at the instance of first and second defendant.

5.2 He further submitted that before the birth of plaintiffs, defendant No.1 and 2 had taken over the suit property after the death of deceased Navnitlal Manilal in their absolute ownership rights, the co-parcenary right of any of the plaintiffs arising is a distant factor so there is no question of the suit property being co-parcenary.

5.3 He further submitted that Ex.41 agreement of sale executed between defendants no.1 and 2 on one hand and defendant on the other, it is clearly stated that the first and second defendant have absolute ownership rights

in the property constructed from their own income, even this covenant contained in the said document is not challenged. In view of the same, he submitted that the suit property does not constitute a co-parcenary property and hence the plaintiffs have no right to challenge the alienation contemplated by Ex.41 by the defendants No.1 and 2 as the absolute owners thereof in favour of defendant No.3 relating to the suit property, therefore the suit property is not an ancestral property.

5.4 He further submitted that the plaintiffs are not co-parceners of the property. Even if it is were so, here in a flat is purchased out of the consideration received and no facts are brought on record whereby it can be proved that the defendants No.1 and 2 have dealt with the property in a manner prejudicial to the interest of minor. In view of the same he submitted that these are the findings of the trial court and this findings are based on cogent and convincing evidence on record and, therefore, this Court may not disturb the said findings in this behalf.

6. I have considered the aforesaid submissions in this behalf. I have also considered the facts stated by the plaintiffs and also the averments made by the defendants in this behalf. After considering the evidence on record, the suit property does not constitute a co-parcenary property and plaintiffs can have no right to challenge the alienation contemplated by the first and second defendants as the absolute owners thereof in favour of the third defendant relating to the suit property. I am of the view that the present plaintiffs have no locus standi as at the time of their birth there was no co-parcenary property. In my view the plaintiffs are not co-parceners of the property and even if it is were so, herein a flat is purchased out of the consideration received and no facts are brought on the record whereby it can be proved that the first and second defendants have dealt with the property in a manner prejudicial to the interest of minor as the property is not ancestral and co-parcenary and, therefore, that question does not arise in this behalf.

7. In view of the same, there is no substance in the appeal and it is accordingly dismissed. The judgment and decree passed by the City Civil Court is confirmed. The Court is beholden to Ms.B.R.Gajjar, learned counsel who appeared as amicus curiae in this appeal.

(K.M. Mehta, J.)

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